

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Elite Restoration		DEFENDANTS First Mercury Insurance Company	
(b) County of Residence of First Listed Plaintiff <u>Chester</u> <i>(EXCEPT* IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <u>Oakland County, MI</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>	
(c) Attorneys (Firm Name, Address, and Telephone Number) Phillip R. Earnest Pietragallo Gordon Alfano Bosick & Raspanti, LLP 38th Floor, One Oxford Centre, Pittsburgh, PA 15219 / 412-263-4374		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED, Attorneys (If Known)	
II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input type="checkbox"/> DEF
IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>			
CONTRACT		TORTS	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	
REAL PROPERTY		CIVIL RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	
FORFEITURE/PENALTY			
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other			
BANKRUPTCY			
<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157			
PROPERTY RIGHTS			
<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark			
LABOR			
<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation			
FEDERAL TAX SUITS			
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609			
IMMIGRATION			
<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			
OTHER STATUTES			
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes			
V. ORIGIN <i>(Place an "X" in One Box Only)</i>			
<input checked="" type="checkbox"/> 1 Original Proceeding		<input type="checkbox"/> 2 Removed from State Court	
<input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 4 Reinstated or Reopened	
<input type="checkbox"/> 5 Transferred from Another District <i>(Specify)</i>		<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	
<input type="checkbox"/> 7 Remanded to State Court		<input type="checkbox"/> 8 Multidistrict Litigation - Direct File	
VI. CAUSE OF ACTION <i>(Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity). 42 Pa.C.S.A. § 8371</i> Brief description of cause: Bad Faith			
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	
VIII. RELATED CASE(S) IF ANY		DEMAND \$ <i>(See instructions):</i>	
		JUDGE <i>(Signature of Attorney of Record)</i>	
DATE <u>5-22-19</u> FOR OFFICE USE ONLY		DOCKET NUMBER	
RECEIPT # _____		AMOUNT _____	
APPLYING IPP _____		JUDGE _____	
		MAG. JUDGE _____	

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ELITE RESTORATION, INC.,

CIVIL ACTION

v.

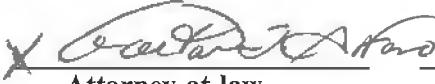
FIRST MERCURY INSURANCE COMPANY,

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (XX)

<p>5/22/2019</p> <hr/> <p>Date</p> <hr/> <p>215-988-1441</p> <hr/> <p>Telephone</p>	<p>X  Plaintiff</p> <hr/> <p>Attorney-at-law</p> <hr/> <p>215-981-0082</p> <hr/> <p>FAX Number</p>	<p>Attorney for</p> <hr/> <p>gja@pietragallo.com</p> <hr/> <p>E-Mail Address</p>
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff:

24 Hagerty Boulevard, Suite 2, West Chester, PA 19382

Address of Defendant:

26600 Telegraph Road, Southfield, MI 48033

Place of Accident, Incident or Transaction:

3851 Boardwalk, Atlantic City, NJ 08401

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when Yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05/22/2019

Cecil T. Alfonso

32971

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

Cecil T. Alfonso, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 05/22/2019

Cecil T. Alfonso

32971

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ELITE RESTORATION, INC.,

Plaintiff,

v.

FIRST MERCURY INSURANCE
COMPANY,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Elite Restoration, Inc. (“Elite Restoration”), by and through its undersigned counsel, hereby files this Complaint against Defendant:

NATURE OF ACTION

1. Plaintiff initiates this action to remedy First Mercury Insurance Company’s breach of contract and bad faith actions. First Mercury’s conduct constitutes actionable conduct under Pennsylvania’s Bad Faith Insurance Practices Act, 42 Pa.C.S.A. § 8371, et seq. (“PA’s Bad Faith Act”).

PARTIES

2. Plaintiff Elite Restoration is a Pennsylvania corporation with a principal place of business located at 24 Hagerty Boulevard, Suite 2, West Chester, PA 19382.

3. Defendant First Mercury Insurance Company (“First Mercury”) is a Delaware corporation with a principal place of business at 26600 Telegraph Road, Southfield, MI 48033.

JURISDICTION, AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(a)(1) and 2201, and venue is proper in this district pursuant to 28 U.S.C. § 1391.

5. Diversity jurisdiction is present because the amount in dispute exceeds \$75,000, exclusive of interest and costs, Elite Restoration has its principal place of business in Pennsylvania, and First Mercury has its principal place of business in Michigan.

BACKGROUND

6. Elite Restoration specializes in restoring the original beauty of significant and historical buildings to today's exacting structural standards. Elite Restoration preserves and restores architectural icons to their full glory for future generations to enjoy.

7. Elite Restoration's clients have included Princeton University, Seton Hall University, Rutgers University, the Dorchester Condos, and Trinity Church in Princeton, NJ.

8. Elite Restoration also has worked on such projects as the Society Hill Towers condominiums, the condominiums at 511 North Broad Street, and the Willings boutique luxury mid-rise apartments.

9. Elite Restoration has worked with building facades, balconies, parking garages, stadiums, commercial and institutional buildings, condominiums, statues and monuments, high-rise buildings, industrial and manufacturing facilities, educational facilities, and religious properties.

The Incident

10. This dispute relates to events that occurred at the Enclave Condominium Association, Inc. (the "Enclave"), 3851 Boardwalk, Atlantic City, NJ 08401.

11. As is self-evident from its very name, the Enclave is a condominium as defined by New Jersey law.

12. Elite Restoration was performing restoration work at the Enclave when Hurricane Michael hit the area on or about October 12, 2018.

13. Due to the hurricane-force winds, water entered many condominium units causing physical damage that required clean-up, remediation, restoration, and some demolition. The damage affected and continues to affect the ability of Enclave unit owners to rent the units to visitors to Atlantic City.

14. Many Enclave units continue to require repair.

15. Elite Restoration faces potential continuing liability due to these events.

The Insurance Policy and Related Activity

16. Elite Restoration purchased an insurance policy from First Mercury Insurance Company, with a renewal Policy Number of NJ-CGL-0000043188-05 (renewing Policy Number NJ-CGL-0000043188-04) with an effective Policy Period of March 1, 2018 to March 1, 2019 (See **Exhibit A**, the “Policy”).

17. Elite Restoration paid a \$36,300 premium for the Policy, which carried a \$5,000 deductible. (**Exhibit A**, Policy at Policy General Liability Policy Renewal Declarations Page & Policy Deductible Endorsement.)

18. The Policy contains an Each Occurrence Limit of \$1,000,000 and a General Aggregate Limit of \$2,000,000. (*Id.*)

19. The Policy contains an Insuring Agreement, which states: “We will pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies. We will have the right and duty to defend the

insured against any ‘suit’ seeking those damages.” (Exhibit A, Policy at Section I – Coverages, Coverage A Bodily Injury and Property Damage Liability, 1. Insuring Agreement.)

20. The Policy contains a “Residential Property or Construction Exclusion (Other Than Apartments) – With Designated Exception(s) exclusion:

RESIDENTIAL PROPERTY OR CONSTRUCTION EXCLUSION (OTHER THAN APARTMENTS) – WITH DESIGNATED EXCEPTION(S)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following additional exclusion applies under paragraph 2. Exclusions of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to any claim, “suit,” demand or loss that alleges “bodily injury,” “property damage” or “personal and advertising injury” that in any way, in whole or in part, arises out of, relates to or results from:

1. The construction of “residential property”;
2. The maintenance or failure to maintain “residential property”;
3. The repair or failure to repair “residential property”;
4. The renovation of “residential property”; or
5. The ownership, occupation, rental, lease, management or use of “residential property”;
if the “residential property” was built, constructed, maintained, repaired, renovated, owned, occupied, rented, leased, managed or used by or on behalf of any insured at any time.

B. The following additional definition applies under **SECTION V – DEFINITIONS**:

“Residential property” means any of the following types of buildings, units or structures: single or multi-family dwellings, condominiums, townhomes including zero lot line townhomes, cooperative apartments, time-shared properties, and the entirety of any commercial or mixed use building, unit or structure of which any of the foregoing forms a part. “Residential property” also includes any common areas and infrastructure associated with any of the foregoing. Any building, unit or structure that becomes or is converted to “residential property” shall be deemed to be “residential property” as of the date of its original construction. “Residential property” does not include apartments that are not any of the foregoing and that are intended to be leased or rented out to others.

However, this exclusion does not apply to the following designated exception(s): Single-family dwellings that are not “tract homes”, condominiums (as defined by applicable controlling statute) or “townhouse projects”. “Tract homes” means 50 or more single-family dwellings constructed by a developer consecutively or concurrently on a single or subdivided parcel or tract of land utilizing common or similar design elements, floorplans or blueprints. “Townhouse projects” means multi-unit housing consisting of homes in a row of the same or similar design with common walls or with very narrow spacing between adjacent sidewalls.

(Exhibit A, Policy at Residential Property Exclusion.)

21. Elite Restoration submitted a claim for insurance on or before October 29, 2018 due to the events described (the “Enclave claim”).

22. First Mercury engaged Custard Insurance Adjusters (“Custard”) to perform several tasks related to the adjustment of the claim, including (1) contacting the Enclave, (2) inspecting the damage, (3) obtaining photographs, (4) determining where the water entered each unit, (5) preparing an estimate for each affected unit.

23. Upon information and belief, on or about November 9, 2018 Custard performed adjusting tasks at the Enclave and on or about November 20, 2018 Custard prepared a First & Final Report reflecting its findings.

24. First Mercury denied coverage for the Enclave claim on January 10, 2019 on the basis of the Residential Property Exclusion.

25. In its denial letter, First Mercury did not rely on the text of the exclusion itself to deny coverage but rather on First Mercury’s interpretation of that language:

COVERAGE POSITION

The work being performed by Elite in this matter was to a high rise condominium building. The above cited Residential Property or Construction Exclusion bars coverage for work on “Residential Property” which includes in its definition condominiums. The exception contained in the exclusion only applies to certain single family dwellings that are neither “tract homes,” condominiums or “townhouse projects.” As none of the exceptions apply, and given this incident occurred with a condominium building, the above referenced exclusion bars coverage for this matter.

(See **Exhibit B**, Jan. 10, 2019 Letter from Young to Culbertson, p.3.)

26. In responding to First Mercury’s denial, Elite Restoration noted that the Residential Property Exclusion “does not apply to condominiums if they are defined as such by applicable controlling law.” (See **Exhibit C**, Mar. 15, 2019 Letter from Earnest to Young.)

27. Elite Restoration also informed First Mercury that its position was negatively affecting Elite Restoration’s potential damages by delaying Elite Restoration’s remediation action during the critical season for rentals. (*Id.*) Elite Restoration’s financial position is being negatively affected by First Mercury’s refusal to cover and assist with settling the Encore claim.

28. First Mercury wrote back to Elite Restoration, refused to retract its denial of insurance, and again declined to actually quote the language of the exclusion, but instead substituted First Mercury’s understanding of the language that the exclusion should have contained in order to exclude coverage for Elite Restoration’s claims. (See **Exhibit D**, Apr. 1, 2019 Letter from Young to Earnest.)

29. Despite claiming that Elite’s policy is not triggered by the language of the exclusion, First Mercury and its adjuster, Custard, have sought to profit from Elite’s claim by charging Elite for the deductible cost of Custard’s work..

COUNT I

Declaratory Judgment

30. Elite Restoration hereby incorporates all of the preceding paragraphs of this pleading as if set forth fully herein.

31. This Court has the authority to rule and declare the rights and other legal relations between Elite Restoration and First Mercury pursuant to 28 U.S.C. § 2201(a).

32. Elite Restoration and First Mercury were parties to a valid insurance contract under the Policy. (**Exhibit A**, Policy.)

33. First Mercury owes coverage under the Policy for the Enclave claim. (**Exhibit A**, Policy at Section I – Coverages, Coverage A Bodily Injury and Property Damage Liability, 1. Insuring Agreement.)

34. First Mercury refuses to provide coverage for the Enclave claim.

35. Elite Restoration seeks a declaration that First Mercury owes coverage for and should honor the Enclave claim.

WHEREFORE, Plaintiff Elite Restoration, Inc. respectfully requests that this Honorable Court enter a declaratory judgment establishing that: (1) the Policy provides for Elite Restoration, Inc.'s unqualified defense and indemnification for the Enclave claim, (2) First Mercury Insurance Company has breached its duty to Elite Restoration, Inc. under the Policy for the Enclave claim, (3) Elite Restoration, Inc. will not breach any duty to First Mercury Insurance Company should Elite Restoration, Inc. take action to settle or compromise the Enclave claim and/or related claims, and (4) First Mercury Insurance Company must defend and indemnify Elite Restoration, Inc. for the Enclave claim.

COUNT II

Breach of Contract

36. Elite Restoration hereby incorporates all of the preceding paragraphs of this pleading as if set forth fully herein.

37. First Mercury owed a duty to Elite to honor the Enclave claim.

38. First Mercury refuses to fulfill its duty.

39. Elite has fulfilled all of its obligations under the Policy.

40. Elite has suffered and continues to suffer damages due to First Mercury's breach of its duty in excess of \$75,000.

WHEREFORE, Plaintiff Elite Restoration, Inc. demands judgment be entered in its favor and against Defendant First Mercury Insurance Company in an amount in excess of \$75,000.

COUNT III

Bad Faith

41. Elite Restoration hereby incorporates all of the preceding paragraphs set forth above as if set forth fully herein.

42. First Mercury's letters of January 10, 2019 and April 1, 2019 misrepresent facts and policy provisions by attempting to convert the actual language of the Policy into contractual terms that are inaccurate and more favorable to First Mercury; rather than rely on the actual language of the Policy itself, First Mercury responded to the Enclave claim by misrepresenting to Elite Restoration the terms and effect of the actual policy language.

43. After learning the details of the Custard adjustment and the costs associated with the remediation, restoration, and repair required to bring the Enclave units back to rentable status, First Mercury elected to place its own interest above that of its insured and denied the Enclave claim in order to avoid paying the costs to completely repair the affected units.

44. First Mercury has misrepresented pertinent facts or policy or contract provisions relating to the Policy and the claim.

45. First Mercury has placed its own interests ahead of its insured's interest, by basing its coverage decision not on the language of the policy but by determining the financial value of claims and only then making a determination as to whether to cover such claims.

46. First Mercury's conduct constitutes actionable conduct under Pennsylvania's Bad Faith Insurance Practices Act, 42 Pa.C.S.A. § 8371, et seq. ("PA's Bad Faith Act") and entitles Elite to all damages awardable under PA's Bad Faith Act, including compensatory damages, punitive and/or exemplary damages, treble damages, attorney's fees, and costs.

WHEREFORE, Elite Restoration, Inc. respectfully requests that this Honorable Court enter judgment against First Mercury Insurance Company for an amount in excess of \$75,000, inclusive of compensatory damages, punitive damages, treble damages, pre-judgment interest, post-judgment interest, enhanced statutory interest, attorneys' fees and costs, as allowed by law.

Dated: May 22, 2019

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By:


GAETAN J. ALFANO
I.D. No. 32971
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Tel: 215-998-1441
gja@pietraallo.com

and

PHILLIP R. EARNEST
I.D. No. 83208
38th Floor, One Oxford Centre
Pittsburgh, PA 15219
Tel: 412-263-4374
pre@pietragallo.com

EXHIBIT A

FIRST MERCURY INSURANCE COMPANY

(A STOCK COMPANY)

STATUTORY HOME OFFICE: 1209 ORANGE STREET, WILMINGTON, DE 19801

ADMINISTRATIVE OFFICE: 26600 TELEGRAPH RD., SOUTHFIELD, MI 48033

GENERAL LIABILITY POLICY RENEWAL DECLARATIONS

POLICY NUMBER NJ-CGL-0000043188-05
RENEWAL OF NJ-CGL-0000043188-04

NAMED INSURED AND MAILING ADDRESS

Elite Restoration Inc

BROKER NAME AND ADDRESS

Gracechurch Associates Inc - Morrisville

24 Hagerty Blvd Ste 2
West Chester, PA 1938283 Big Oak Road
Morrisville, PA 19067**POLICY PERIOD** From: 3/1/2018 To: 3/1/2019

AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE:

Each Occurrence Limit:	\$1,000,000	Employee Benefits Liability:	\$1,000,000
Personal & Advertising Injury Limit:	\$1,000,000	Employee Benefits Aggregate Limit:	\$1,000,000
General Aggregate Limit:	\$2,000,000	Liquor Liability Limit:	Excluded
Products-Completed Operations Aggregate Limit:	\$2,000,000	Liquor Liability Aggregate:	Excluded
Damage To Premises Rented To You:	\$50,000	Designated Construction Projects	
Medical Payment Limit:	Excluded	General Aggregate Limit:	\$2,000,000
		Total Policy Aggregate Limit:	\$5,000,000

RETAINED LIMIT: See form FMIC GL 2015 (01/14)**PREMIUM COMPUTATION:** Premium: \$36,300

Processing Fee: \$150 Inspection Fee: \$250

Coverage for certified acts of terrorism has been rejected; exclusion attached.

(Per TRIA Disclosure Notice.)

DEPOSIT PREMIUM: \$36,300

DESCRIPTION OF BUSINESS:Masonry

FORM OF BUSINESS:

INDIVIDUAL
 JOINT VENTURE

PARTNERSHIP
 LIMITED PARTNERSHIP
 LIMITED LIABILITY COMPANY

ORGANIZATION, INCLUDING A CORPORATION (BUT NOT
 INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED
 LIABILITY COMPANY)

ENDORSEMENTS ATTACHED TO THIS POLICY: See Schedule FMIC-END - Schedule of Forms and Endorsements

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association.. Surplus Lines Agent :Gracechurch Associates Inc - Morrisville 83 Big Oak Road Morrisville, PA 19067

IMPORTANT! Please carefully examine your policy as it may contain significant coverage modifications or exclusions.
 If this policy is a renewal, it may not contain the same precise terms and conditions as the prior policy.

Date: 3/12/2018 Authorized Representative:

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S)
 AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

FMIC-GL-DS-0001 (12/10)

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Property and Casualty Insurance Guaranty Association. Placed by Gracechurch Associates, Inc., 83 Big Oak Road, Morrisville, PA 19067.

EXTENSION OF DECLARATIONS

Policy Number: NJ-CGL-0000043188-05

Location of Premises:

- 1 24 HAGERTY BLVD SUITES 2 & 4 WEST CHESTER PENNSYLVANIA 19382
- 2 1620 SAINT AGNES LN SUITE C6 GWYNN OAK MARYLAND 21207
- 3 5240 OLD FREDERICK ROAD (FENCED) BALTIMORE MARYLAND 21229

Classification and Premium:

Exposure Basis	Exposure Amount	Rate	Deposit Premium
Gross Sales	\$5,500,000	\$6.6000/Per \$1,000 of Gross Sales subject to \$34,485 minimum premium	\$36,300

Insured: Elite Restoration Inc

Policy Number: NJ-CGL-0000043188-05

SCHEDULE OF FORMS AND ENDORSEMENTS

(other than applicable forms shown elsewhere in the policy)

Forms and Endorsements applying to and made part of this policy at the time of issuance:

FMIC OFAC (12/12) - U.S. TREASURY DEPARTMENTS OFAC ADVISORY NOTICE

CG 00 01 (12/07) - COMMERCIAL GENERAL LIABILITY COVERAGE FORM

IL 00 17 (11/98) - COMMON POLICY CONDITIONS

SOP FM (07/16) - SERVICE OF PROCESS CLAUSE

GU 207 (6/78) - NAMED INSURED EXTENSION

CG 00 68 (05/09) - RECORD AND DISTRIBUTE OF MATERIAL IN VIOLATION

CG 04 35 (12/07) - EMPLOYEE BENEFITS LIABILITY COVERAGE

CG 20 33 (04/13) - AI - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS

CG 20 37 (04/13) - AI - OWNERS, LESSEES OR CONTRACTORS - COMP OPS

CG 21 06 (05/14) - EXCL - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL

CG 21 35 (10/01) - EXCLUSION - COVERAGE C - MEDICAL PAYMENTS

CG 21 47 (12/07) - EMPLOYMENT RELATED PRACTICES EXCLUSION

CG 21 49 (09/99) - TOTAL POLLUTION EXCLUSION ENDORSEMENT

CG 21 67 (12/04) - FUNGI OR BACTERIA EXCLUSION

CG 21 75 (01/15) - EXCL OF TERROR AND EXCL OF OTHER ACTS OUTSIDE OF US

CG 21 86 (12/04) - EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS

CG 22 79 (04/13) - EXCLUSION - CONTRACTORS PROFESSIONAL LIABILITY

^ 24 04 (05/09) - WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

. 24 26 (04/13) - AMENDMENT OF INSURED CONTRACT DEFINITION

FMIC GL 1002 (10/15) - PRIMARY AND NON-CONTRIBUTORY - OTHER INSURANCE COND

FMIC GL 2010 (01/14) - CROSS SUITS ENDORSEMENT

FMIC GL 2011 (04/11) - CONTINUOUS OR PROGRESSIVE INJURY AND DAMAGE EXCL

FMIC GL 2015 (01/14) - POLICY DEDUCTIBLE ENDORSEMENT

FMIC GL 2017 (09/16) - DESIGNATED CONSTRUCT PROJECT GEN AGG LIMIT

FMIC GL 2077 (09/14) - HAZARDOUS MATERIALS EXCLUSION

FMIC GL 2088 (02/12) - EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES

FMIC GL 2125 (09/17) - EXCLUSION - SPECIFIED STATE OPERATIONS EXCLUSION

FMIC GL 2152 (07/11) - SUBSIDENCE EXCLUSION

-- FMIC GL 2163 (03/15) - MINIMUM EARNED PREMIUM ENDORSEMENT

FMIC GL 2169 (10/15) - ROOFING OPERATIONS WARRANTIES

FMIC GL 2203 (12/16) - BASIS OF PREMIUM ENDORSEMENT

FMIC GL 2244 (02/12) - EXCLUSION - SNOW AND/OR ICE REMOVAL

FMIC GL 2608 (04/15) - SPECIAL CONDITIONS FOR SUBCONTRACTOR INCL DEDUCTIBLE

FMIC GL 2618 (11/15) - RES PROP OR CONST EXCL (OTHER THAN APART) W/ EXCEPT

FMIC GL 2695 (07/17) - EXCL - OPERATIONS COVERED BY A DEDICATED INS PROGRAM

IL 00 21 (09/08) - NUCLEAR ENERGY LIAB EXCL ENDST

FMIC CLAIM NOTIFICATION (06/2016)

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency." OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons." This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

COMMERCIAL GENERAL LIABILITY
CG 00 01 12 07

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f.Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or

- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

I. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- 7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
 - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and

- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

 - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
 - (2) The providing of or failure to provide warnings or instructions.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

SERVICE OF PROCESS CLAUSE

The Insurance Commissioner, Director of Insurance, Superintendent of Insurance, or other officer specified by law, pursuant to the laws of the state where this policy is delivered, is hereby designated as the true and lawful attorney of the Company upon whom may be served all lawful process in any action, suit, or proceeding arising out of this policy. The Company further designates:

Name: Marc Adee, President
Name of Company or Firm: First Mercury Insurance Company
Mailing Address: 305 Madison Avenue
Morristown, NJ 07960

as its person to whom such process shall be forwarded by the Insurance Commissioner, Director of Insurance, Superintendent of Insurance, or other officer specified by law.

All other terms and conditions of the policy remain unchanged.

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

ENDORSEMENT

This endorsement, effective on 3/1/2018 (DATE) at 12:01 A.M. standard time, forms a part of

Policy No. NJ-CGL-0000043188-05 of the First Mercury Insurance Company
(NAME OF INSURANCE COMPANY)

Issued to Elite Restoration Inc

By CoverX Specialty

Authorized Representative



IT IS HEREBY UNDERSTOOD AND AGREED THAT THE NAMED INSURED SHALL READ AS FOLLOWS:

Elite Restoration Inc
Elite Restoration of Maryland Inc
CBF Associates LLC
5240 Old Fredericks Road LLC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion q. of Paragraph 2. **Exclusions of Section I – Coverage A Bodily Injury And Property Damage Liability** is replaced by the following:

2. **Exclusions**
This insurance does not apply to:
q. **Recording And Distribution Of Material Or Information In Violation Of Law**
"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:
(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

B. Exclusion p. of Paragraph 2. **Exclusions of Section I – Coverage B Personal And Advertising Injury Liability** is replaced by the following:

2. **Exclusions**
This insurance does not apply to:
p. **Recording And Distribution Of Material Or Information In Violation Of Law**
"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:
(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

POLICY NUMBER:NJ-CGL-0000043188-05

COMMERCIAL GENERAL LIABILITY
CG 04 35 12 07**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****EMPLOYEE BENEFITS LIABILITY COVERAGE**

**THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage	Limit Of Insurance	Each Employee Deductible	Premium
Employee Benefits Programs	\$ 1,000,000 each employee \$ 1,000,000 aggregate	\$ 1,000	\$ INCLUDED
Retroactive Date:	05/12/2012		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

A. The following is added to **Section I – Coverages:**

COVERAGE – EMPLOYEE BENEFITS LIABILITY**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Paragraph D. (Section III – Limits Of Insurance); and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to damages only if:
 - (1) The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
 - (2) The act, error or omission, did not take place before the Retroactive Date, if any, shown in the Schedule nor after the end of the policy period; and
 - (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy period or an Extended Reporting Period we provide under Paragraph F. of this endorsement.
- c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:
 - (1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or

(2) When we make settlement in accordance with Paragraph a. above.

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

- d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.

2. Exclusions

This insurance does not apply to:

a. Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

b. Bodily Injury, Property Damage, Or Personal And Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

c. Failure To Perform A Contract

Damages arising out of failure of performance of contract by any insurer.

d. Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

e. Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation

Any "claim" based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

f. Workers' Compensation And Similar Laws

Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

h. Available Benefits

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. Taxes, Fines Or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

j. Employment-Related Practices

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

B. For the purposes of the coverage provided by this endorsement:

1. All references to Supplementary Payments – Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Liability.
2. Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.

C. For the purposes of the coverage provided by this endorsement, Paragraphs 2. and 3. of Section II – Who Is An Insured are replaced by the following:

2. Each of the following is also an insured:
 - a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
 - b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.

D. For the purposes of the coverage provided by this endorsement, **Section III – Limits Of Insurance** is replaced by the following:

1. Limits Of Insurance

a. The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:

- (1) Insureds;
- (2) "Claims" made or "suits" brought;
- (3) Persons or organizations making "claims" or bringing "suits";
- (4) Acts, errors or omissions; or
- (5) Benefits included in your "employee benefit program".

b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

- (1) An act, error or omission; or
- (2) A series of related acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

The Limits of Insurance of this endorsement apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

2. Deductible

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

c. The terms of this insurance, including those with respect to:

(1) Our right and duty to defend any "suits" seeking those damages; and

(2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"

apply irrespective of the application of the deductible amount.

d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

E. For the purposes of the coverage provided by this endorsement, Conditions 2. and 4. of **Section IV – Commercial General Liability Conditions** are replaced by the following:

- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims-made basis, if:
 - (a) No Retroactive Date is shown in the Schedule of this insurance; or
 - (b) The other insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this insurance.
- (2) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Schedule of this endorsement.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance to the total applicable limits of insurance of all insurers.

F. For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added, or, if this endorsement is attached to a claims-made Coverage Part, replaces any similar Section in that Coverage Part:

EXTENDED REPORTING PERIOD

1. You will have the right to purchase an Extended Reporting Period, as described below, if:
 - a. This endorsement is canceled or not renewed; or
 - b. We renew or replace this endorsement with insurance that:
 - (1) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
 - (2) Does not apply to an act, error or omission on a claims-made basis.
2. The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Schedule. Once in effect, the Extended Reporting Period may not be canceled.
3. An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The "employee benefit programs" insured;
- b. Previous types and amounts of insurance;
- c. Limits of insurance available under this endorsement for future payment of damages; and
- d. Other related factors.

The additional premium will not exceed 100% of the annual premium for this endorsement.

The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

4. If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.

The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance.

Paragraph D.1.b. of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph D.1.c.

G. For the purposes of the coverage provided by this endorsement, the following definitions are added to the Definitions Section:

1. "Administration" means:
 - a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
 - b. Handling records in connection with the "employee benefit program"; or
 - c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.
2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
3. "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.



4."Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

- a. Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
- b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits;
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and

e. Any other similar benefits designated in the Schedule or added thereto by endorsement.

H. For the purposes of the coverage provided by this endorsement, Definitions 5. and 18. in the Definitions Section are replaced by the following:

5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
18. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

COMMERCIAL GENERAL LIABILITY
CG 20 33 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

 1. Required by the contract or agreement you have entered into with the additional insured; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
As required by written contract executed prior to the "bodily injury" or "property damage".	As required by written contract executed prior to the "bodily injury" or "property damage" and if covered under this policy.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

COMMERCIAL GENERAL LIABILITY
CG 21 06 05 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion 2.p. of Section I – Coverage A Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury."

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

POLICY NUMBER: NJ-CGL-0000043188-05

COMMERCIAL GENERAL LIABILITY
CG 21 35 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – COVERAGE C – MEDICAL PAYMENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location Of Premises Or Classification:
All Locations

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply; and
2. The following is added to Section I – Supplementary Payments:
 - b. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

COMMERCIAL GENERAL LIABILITY
CG 21 47 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

(1) A person arising out of any:

- (a) Refusal to employ that person;
- (b) Termination of that person's employment; or
- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

(1) A person arising out of any:

- (a) Refusal to employ that person;
- (b) Termination of that person's employment; or
- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COMMERCIAL GENERAL LIABILITY
CG 21 67 12 04

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2.
Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph 2.
Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

COMMERCIAL GENERAL LIABILITY
CG 21 75 01 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism," or out of an "other act of terrorism" that is committed outside of the United States (including its territories and possessions and Puerto Rico), but within the "coverage territory." However, with respect to an "other act of terrorism," this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000 (valued in US dollars). In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or

- b. Protracted and obvious physical disfigurement; or
- c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs 1. and 2. describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury," "property damage," "personal and advertising injury," "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2."Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act;
- b. The act resulted in damage:
 - (1) Within the United States (including its territories and possessions and Puerto Rico); or
 - (2) Outside of the United States in the case of:
 - (a) An air carrier (as defined in Section 40102 of title 49, United States Code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or
 - (b) The premises of any United States mission; and

c. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism."

Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

COMMERCIAL GENERAL LIABILITY
CG 21 86 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:

1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.

B. The following definition is added to the Definitions Section:

"Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:

1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
3. A reinforced or unreinforced base coat;
4. A finish coat providing surface texture to which color may be added; and
5. Any flashing, caulking or sealant used with the system for any purpose.

COMMERCIAL GENERAL LIABILITY
CG 22 79 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage," or the offense which caused the "personal and advertising injury," involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

POLICY NUMBER: NJ-CGL-0000043188-05

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any Person Or Organization You Have Agreed In A Written Contract To Waive
Any Right Of Recovery Against Provided The Written Contract Is Executed Prior
To The Injury Or Damage

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of
Rights Of Recovery Against Others To Us of
Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



COMMERCIAL GENERAL LIABILITY
CG 24 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the **Definitions** section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement prior to the injury or damage that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

However, the insurance provided under this endorsement will not apply beyond the extent required by such contract or agreement.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CROSS SUITS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, COVERAGE D PROFESSIONAL LIABILITY, 2. Exclusions and SECTION I – COVERAGES PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions are amended and the following is added:

CROSS SUITS EXCLUSION

This Policy does not apply to a claim, demand or "suit" for damages initiated, alleged, or caused to be brought about by a Named Insured covered by this Policy against any other Named Insured. It is the intent of this exclusion to exclude from this insurance all claims, demands or "suits" as above described.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTINUOUS OR PROGRESSIVE INJURY AND DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE COVERAGE PART

It is agreed under **Section I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**,
1. Insuring Agreement, Paragraph b (3), c and d are deleted in their entirety and the following exclusion is added to **Section I**,
2. Exclusions of this policy.

This insurance does not apply to:

1. Any damages arising out of or related to "bodily injury" or "property damage" whether such "bodily injury" or "property damage" is known or unknown,
 - (a) which first occurred in whole or in part prior to the inception date of this policy (or the retroactive date of this policy, if any; whichever is earlier); or
 - (b) which are, or are alleged to be, in the process of occurring as of the inception date of the policy (or the retroactive date of this policy, if any; whichever is earlier) even if the "bodily injury," or "property damage" continues during this policy period; or
 - (c) which were caused, or are alleged to have been caused, by the same condition(s) or defective construction which first existed prior to the inception date of this policy.
2. Any damages arising out of or related to "bodily injury" or "property damage" whether known or unknown, which are in the process of adjustment, settlement, or "suit" as of the inception date of this policy (or the retroactive date of this policy, if any; whichever is earlier).

We shall have no duty to defend any insured against any loss, claim, "suit," or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY DEDUCTIBLE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

	AMOUNT AND BASIS OF DEDUCTIBLE	
	PER CLAIM	PER OCCURRENCE
<u>COVERAGE A</u>		
BODILY INJURY LIABILITY	\$	\$
OR		
PROPERTY DAMAGE LIABILITY	\$	\$
OR		
BODILY INJURY LIABILITY AND/OR PROPERTY DAMAGE LIABILITY COMBINED	\$5,000	\$
	PER INJURY	
<u>COVERAGE B</u>		
PERSONAL AND ADVERTISING INJURY LIABILITY	\$5,000	
<u>COVERAGE C</u>		
MEDICAL PAYMENTS	PER CLAIM	PER OCCURRENCE
	\$	\$

- A. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability or Medical Payments Coverages to pay damages and Supplementary Payments on your behalf applies only to the amount of damages and Supplementary Payments in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
- B. Your policy may have a deductible amount on either a per claim, a per "occurrence," or a per injury basis. Your deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
 - 1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage";
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined; or
 - d. Under Supplementary Payments – Coverages A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies;
 - e. Under Medical Payments Coverage C, to all damages sustained by any one person because of "bodily injury"; as the result of any one "occurrence."

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury," a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage," person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a per "occurrence" basis, that deductible amount applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage";
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined; or
 - d. Under Supplementary Payments – Coverages A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies.
 - e. Under Medical Payments Coverage C, to all damages sustained by any one person because of "bodily injury"; as the result of any one "occurrence," regardless of the number of persons or organizations who sustain damages because of that "occurrence."
3. **PER INJURY BASIS.** If the deductible amount indicated in the Schedule above is on a per injury basis, the deductible amount applies as follows:
 - a. Under the Personal and Advertising Injury Liability Coverage to all damages because of "personal and advertising injury" sustained by any one person or organization as a result of any one injury.
 - b. Under Supplementary Payments – Coverages A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies.

C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend the insured against any "suits" seeking those damages; and
2. Your duties in the event of an "occurrence," claim, or "suit" apply irrespective of the application of the deductible amount.

D. We, at our sole election and option, may either:

1. Pay any part of or all of the deductible amount to effect settlement of any claim or "suit" or payment of Supplementary Payments. Upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
2. Simultaneously upon receipt of notice of any claim or "suit," or at any time thereafter, request you pay or deposit with us all or any part of the deductible amount, to be held and applied by us as herein provided.

E. The deductible may not be satisfied by payments made by any additional insured, any other insurance, or any other insurer, unless such payments are made under a policy written specifically to cover the deductible obligations under this policy.

F. Notwithstanding any other provision of this policy or any endorsements thereto, including the Separation of Insureds Condition, all Named Insureds are jointly and severally liable to us for payment of the full deductible amounts applicable to any and all claims and "occurrences" to which this policy may apply.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT SUBJECT TO A
TOTAL POLICY AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects:

Any project: 1) covered under this policy; and 2) required by written contract with you to be subject to a separate General Aggregate limit.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount shown in the Declarations of this policy.
 2. Subject to the Total Policy Aggregate Limit, the Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits."
3. Any payments made under COVERAGE A for damages shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Subject to the Total Policy Aggregate Limit, such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
4. The limits shown in the Declarations for Each Occurrence continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit and the Total Policy Aggregate Limit.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 1. Any payments made under COVERAGE A for damages shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
 3. Such payments will reduce the Total Policy Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit or the Designated Construction Project General Aggregate Limit or the Total Policy Aggregate Limit.
- D. The Total Policy Aggregate Limit scheduled in the Declarations of this policy is the most we will pay for the sum of: (a) all damages covered under this policy and falling within the scheduled Designated Construction Projects(s) General Aggregate Limits described in Paragraph A. of this endorsement; and, (b) all damages covered under this policy and falling within the General Aggregate Limit, as described in Paragraph B. of this endorsement and as set forth in the provisions of Limits of Insurance (SECTION III) not otherwise modified by this endorsement. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for the General Aggregate Limit or Designated Construction Projects(s) General Aggregate Limit, and applies to all locations(s) set forth in the Schedule above.

The Total Policy Aggregate Limit applies collectively, rather than separately, to all of your scheduled locations. The Total Policy Aggregate Limit is not reduced by payments for damages covered under this policy and falling within the "products-completed operations hazard," but such payments will reduce the Products-Completed Operations Aggregate Limit, as described in Paragraph C. of this endorsement.
- E. The provisions of Limits Of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HAZARDOUS MATERIALS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE COVERAGE PART

A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, and SECTION I – COVERAGES BODILY INJURY AND PROPERTY DAMAGE LIABILITY are amended and the following Exclusion is added:

This insurance does not apply to:

Hazardous Materials

- (1) "Bodily injury," "property damage" or "personal and advertising injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, ingestion, inhalation, dispersal, seepage, migration, release or escape of "hazardous materials" at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "hazardous materials"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "hazardous materials."
- (3) Any obligations to share damages with or indemnify another party whom must pay damages because of injury or damage relating to "hazardous materials."
- (4) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with paragraphs (1), (2), or (3) above.

This exclusion applies whether or not such "hazardous material(s)" has any function in your business, operations, premises, site or location.

B. SECTION V – DEFINITIONS is amended and the following added:

"Hazardous materials" means materials that are radioactive, corrosive, oxidizers, asphyxiates, biohazardous, toxic, pathogen or allergen substances and organisms, lead, asbestos, silica and materials containing them.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – PUNITIVE OR EXEMPLARY DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE COVERAGE PART
LIQUOR LIABILITY COVERAGE FORM

This insurance does not apply to any claim for punitive or exemplary damages, fines or penalties imposed by law, restitution or any damages which are a multiple of, or in addition to, compensatory damages including related interest or costs whether or not such damages, related interest or costs are characterized as punitive or exemplary damages (hereinafter referred to as punitive or exemplary damages). If a "suit" shall have been brought against the insured for a claim falling within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then the company will afford a defense to such action; however, the company shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – OPERATIONS, WORK, INJURY OR DAMAGE IN SCHEDULED STATE(S) OR TERRITORIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Excluded state(s) or territories:	Schedule
Alaska Arizona California Colorado Florida Hawaii Nevada New York Oregon South Carolina Washington Puerto Rico And All U.S. Territories, Including Commonwealths And Possessions	

The following exclusions are added to Paragraph 2. Exclusions of COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

This insurance does not apply to:

1. "Bodily injury," "property damage" or "personal and advertising injury" arising out of "your work" performed in the state(s) or territories shown in the Schedule of this endorsement.
2. "Bodily injury," "property damage" or "personal and advertising injury" that occurs in the state(s) or territories shown in the Schedule of this endorsement.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2125(09/2017)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUBSIDENCE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions and SECTION I – COVERAGES PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions are amended and the following is added:

This insurance does not apply to:

"Bodily injury" or "property damage" directly or indirectly arising out of caused by, resulting from, contributed to, aggravated by or related to the subsidence, settling, settlement, expansion, sinking, slipping, falling away, tilting, caving in, shifting, eroding, rising, heaving, landslide, flood or mud flow, earthquake, volcanic eruption or other tectonic processes or any other movement, of land or earth, however caused, and whether by natural, manmade, accidental or artificial means. This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage."

We shall have no duty or obligation on our part under this insurance to defend, respond to, investigate or indemnify any insured against any loss, claim, "suit," or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

This exclusion also applies to any obligation to, share damages with, repay or indemnify someone else who must pay damages because of such "bodily injury" or "property damage."

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM ENDORSEMENT

The following additional policy Conditions supersede any other policy conditions and the Named Insured hereby agrees that the total policy premium and minimum earned premium(s) due for this policy shall be calculated in accordance with the following:

Total Policy Premium

This policy is subject to a Total Policy Premium which means the premium that is calculated as follows:

1. The deposit premium as shown in the policy Declarations, plus
2. Any premium adjustment by endorsement, plus
3. Any additional premium developed by audit.

The premium entered on the Declarations page of this policy as DEPOSIT PREMIUM is a provisional premium only and is subject to adjustment in accordance with our rules, rates and the Premium Audit provisions of this policy.

Audits Minimum Earned Premium

With regard to audits the Minimum Annual Premium is 95% of the DEPOSIT PREMIUM as stated in the policy Declarations. Premium adjustments affected as a result of premium audits may be done while the policy is in effect or after the policy is no longer in effect. The due date for audit premiums is the date shown as the due date on the bill.

Cancellation Minimum Earned Premium

1. If you cancel this policy, the return premium will be the lesser of:
 - a. 90% of the pro rata unearned premium or
 - b. 75 % of the Deposit Premium.
2. If the Named Insured fails to remit premium payment when due, such failure shall be considered a request by the Named Insured to cancel this policy and the return premium will be determined in accordance with 1. a. or b. above.
3. If we cancel the policy for any reason, other than for non-payment of premium, the minimum earned premium shall not apply. We will return to you the pro rata amount of the unearned premium.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2163(03/2015)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ROOFING OPERATIONS WARRANTIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed that such Insurance as provided by this policy is modified and subject to the following provisions:

It is a condition precedent to liability and coverage under this policy when performing "roofing operations work" that the insured, additional insured or subcontractor comply with all roofing operations procedures, protective safeguards, conditions and warranties as indicated in this endorsement.

1. You have taken "appropriate" steps to determine any approaching adverse weather in advance of any job or work commencing.
2. You have taken "appropriate" steps to provide a temporary waterproof covering for an "open roof" able to withstand the normal elements.
3. The cover must be put in place if the "open roof" and job-site is to be left unattended for more than four hours.
4. You must conduct a diligent inspection of any hot tar or heat application work immediately preceding your departure from the premises. You are further required to "document" the inspection.
5. The insured will remain at the job-site of any hot tar or heat application job-site for a period of not less than one hour after the hot tar or heat application process has been completed. You are further required to "document" the timeline.
6. The insured will have at hand a functional, fully charged 15 lb. or larger dry chemical fire extinguisher when hot tar or other heat application process is being used.

The following additional definitions as used in this endorsement apply:

"Open Roof." The term "open roof" as used herein shall include any roof or section of roof thereof where shingles, tar, felt paper or any other protective covering has been removed, thereby leaving exposed any supporting structure, decking, wood shell, building interior or contents of any building to the elements.

"Appropriate." The term "appropriate" as used herein means actions customarily and normally taken/used by roofing contractors in the same field to protect or prevent damage under similar circumstances.

"Document." The term "document" as used herein means the insured or others working on your behalf will have a designated employee complete a signed and dated written report for each job-site of each inspection showing the time of the completion of work and the time of any required and completed inspections.

"Roofing Operations Work" means all work performed in connection with the application of weatherproofing and protective or roofing materials of any kind to roofs of buildings or other structures. The term shall also include all work performed in connection with: (a) the installation of roofs, including related metal work such as flashing, and (b) alterations, additions, maintenance, and repair, including painting and coating of existing roofs. The term shall also include but is not limited to gutter and downspout work, the construction of the sheathing or base of roofs, or the installation of television-signal receiving equipment, air conditioners, exhaust and ventilating equipment, skylights, solar panels or similar appliances attached to roofs.

The failure to fulfill the conditions precedent to liability and coverage under this policy as stated will render coverage under this policy null and void, at the sole option of the company. However, these warranties and policy conditions do not apply to "property damage" included within the "products-completed operations hazard."

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2169(10/2015)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BASIS OF PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

It is understood and agreed that **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, and **SECTION IV – PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS** are amended to include the following definitions of basis of premium used for computing premiums for this coverage:

Gross Sales or Receipts is defined as the gross amount charged by the Named Insured, concessionaires of the Named Insured, or by others trading under the Insured's name for:

1. All goods or products sold or distributed including intercompany sales in the coverage territory as defined in the policy;
2. Operations performed during the policy period;
3. Rentals during the policy period; and
4. Dues or fees during the policy period.

Only the following items shall be deducted from Gross Sales or Receipts:

1. Sales or excise taxes which are collected and remitted directly to a governmental division;
2. Credits for repossessed merchandise and products returned;
3. Finance charges for items sold on installment;
4. Freight charges on sales if freight is charged as a separate item on customer's invoice; and
5. Royalty income from patent rights or copyrights which are not product sales.

Construction Costs is defined as the total cost for all work performed during the policy period by you or for you by independent contractors and/or subcontractors at all levels, including:

1. The cost of all labor, materials, equipment and supplies furnished, used or delivered for use in the execution of such work, whether furnished by the owner, by the contractors, or by subcontractors at any level; and
2. General conditions, contingency fees, overhead and profit.

Construction costs does not include soft costs, including but not limited to the cost of land acquisition, financing (including lender's fees), insurance premiums, attorneys, environmental audits, architectural fees, engineering fees, design costs, permitting costs, consulting costs and other associated fees.

Payroll or Remuneration is defined as the sum of salaries, wages, tips, piece of work, commission, bonuses, overtime, board and meals for work performed and excluding excess in accordance with the state payroll limitation rules.

Overtime is defined as hours worked at increased rates of pay in excess of hours normally worked in a given day or week. If there is a guaranteed wage plan which assures employees a given wage for working a specific number of hours per week, then the overtime means only the hours worked in excess of that specific amount. If there are records available showing the wages paid for overtime separately, which exceed the amount that would have been paid for the same work during normal hours, then all such excess wages are excluded. If these records show only the total of wages paid, including overtime on a time and one-half basis, then one-third of those wages should be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, one-half of the total pay for double time shall be excluded.

Excluded from payroll is remuneration paid to clerical office employees, including those whose duties are strictly limited to keeping the Insured's books or records, conducting correspondence, or engaged in clerical work in these areas. Anyone who does not work in the area separated physically by walled floors, or partitions from all other work areas of the Insured is not considered. An exception to this is if the payroll or clerical office employees are specifically included in a classification wording or footnote of the ISO general liability classification.

Subcontracted Costs is defined as the total costs of all work, all labor, materials and equipment furnished, used or delivered for use in the execution of work that has been contracted by the Insured to be performed by an independent party.

Units is defined as the number of persons or items described.

Rental Receipts is defined as the gross amount charged by the Named Insured, concessionaires of the Named Insured, or by others trading under the Insured's name for rental of equipment.

Admissions is defined as the total number of persons, other than employees of the Named Insured, admitted to an event or events conducted on the premises, whether on paid admission, tickets, complimentary tickets, or passes.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – SNOW AND/OR ICE REMOVAL

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended and the following added:

This insurance does not apply to "bodily injury" or "property damage" directly or indirectly arising out of, caused by, resulting from, contributed to, aggravated by or related to the insured's operations or completed operations involving the removal of snow and/or ice. This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage" or whether any such claim, demand or "suit" involves a theory of liability, including but not limited to, negligent hiring, negligent training, or negligent supervision.

We shall have no duty or obligation under this insurance to defend, respond to, investigate or indemnify any insured against any loss, claim, "suit," or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies. This exclusion also applies to any obligation to share damages with, repay or indemnify someone else who must pay damages because of such "bodily injury" or "property damage."

This exclusion does not apply if you remove snow and/or ice from any premises that you own or rent whose address is shown within the policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2244(02/2012)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL CONDITIONS FOR SUBCONTRACTORS INCLUDING DEDUCTIBLE

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM**

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended and the following Policy Conditions added:

1. Certificates of insurance will be obtained from all contractors, subcontractors or any other persons or entities performing work or operations on your behalf prior to commencement of such work or operations. Such certificates of insurance must evidence General Liability and if applicable Excess or Umbrella coverage with total limits of liability equal to or greater than \$1,000,000 each occurrence (if no amount is shown, the amount will be \$1 million). Such insurance must be maintained during the entire period that such work or operations are performed.
2. You will be named as an Additional Insured on all such contractor's, subcontractor's or other person's or entity's General Liability policies.
3. You will obtain hold harmless agreements from all such contractors, subcontractors or other persons or entities indemnifying you against all losses to the maximum extent allowed by law for work or operations performed on your behalf by all such contractors, subcontractors or other persons or entities.

Failure to comply with the above conditions will result in a deductible amount of \$25,000 , applicable in the same manner as other deductible(s) under this policy, for any "bodily injury," "property damage" or "personal and advertising injury" arising out of work or operations performed by such contractor(s), subcontractor(s) or other person(s) or entities(s).

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2608(04/2015)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RESIDENTIAL PROPERTY OR CONSTRUCTION EXCLUSION (OTHER THAN APARTMENTS) – WITH DESIGNATED EXCEPTION(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following additional exclusion applies under paragraph 2. Exclusions of COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:

This insurance does not apply to any claim, "suit," demand or loss that alleges "bodily injury," "property damage" or "personal and advertising injury" that in any way, in whole or in part, arises out of, relates to or results from:

1. The construction of "residential property";
2. The maintenance or failure to maintain "residential property";
3. The repair or failure to repair "residential property";
4. The renovation of "residential property"; or
5. The ownership, occupation, rental, lease, management or use of "residential property";

if the "residential property" was built, constructed, maintained, repaired, renovated, owned, occupied, rented, leased, managed or used by or on behalf of any insured at any time.

B. The following additional definition applies under SECTION V – DEFINITIONS:

"Residential property" means any of the following types of buildings, units or structures: single or multi-family dwellings, condominiums, townhomes including zero lot line townhomes, cooperative apartments, time-shared properties, and the entirety of any commercial or mixed use building, unit or structure of which any of the foregoing forms a part. "Residential property" also includes any common areas and infrastructure associated with any of the foregoing. Any building, unit or structure that becomes or is converted to "residential property" shall be deemed to be "residential property" as of the date of its original construction. "Residential property" does not include apartments that are not any of the foregoing and that are intended to be leased or rented out to others.

However, this exclusion does not apply to the following designated exception(s):

Single-family dwellings that are not "tract homes", condominiums (as defined by applicable controlling statute) or "townhouse projects". "Tract homes" means 50 or more single-family dwellings constructed by a developer consecutively or concurrently on a single or subdivided parcel or tract of land utilizing common or similar design elements, floorplans or blueprints "Townhouse projects" means multi-unit housing consisting of homes in a row of the same or similar design with common walls or with very narrow spacing between adjacent sidewalls.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – OPERATIONS COVERED BY A DEDICATED INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, are amended and the following added:

This insurance does not apply to any "bodily injury," "property damage" or "personal and advertising injury":

1. Arising out of your ongoing operations at any construction project which is, or was subject to a "dedicated insurance program," or
2. Included within the "products-completed operations hazard," arising out of "your work" at any construction project which is, or was subject to a "dedicated insurance program."

This exclusion applies whether or not the "dedicated insurance program":

- a. Provides coverage to one or more contractors;
- b. Provides coverage for one or more projects at one or more locations;
- c. Provides multiple lines of coverage;
- d. Provides coverage identical to that provided by this Coverage Part;
- e. Has limits adequate to cover all claims; or
- f. Remains in effect.

For the purposes of this endorsement:

"Dedicated insurance program" means Wrap-Up programs(s), Owner Controlled Insurance Program(s), Contractor Controlled Insurance Program(s) and any other job or project specific insurance program(s), whether provided by you, or any other person or entity.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

Endorsement effective

Policy No.

Endorsement No.

Named Insured

Countersigned by _____

FMIC-GL-2695(07/2017)

IL 00 21 09 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

- A. Under any Liability Coverage, to "bodily injury" or "property damage":
 - (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

CLAIM NOTIFICATION

Send all claim notifications and information to:

First Mercury Insurance Company

26600 Telegraph Rd.
Southfield, MI 48033

Or Fax to:

First Mercury Insurance Company

Attn: Claim Department
Fax Number: (248) 357-5036

Or Email to

Claimsfax@firstmercury.com

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

EXHIBIT B



Vera Young | Executive Specialist, Claims

Crum & Forster

26600 Telegraph Road | Southfield, MI 48033 | United States
d +1.248.213.5158 t +1.800.732.6837 ext 75158 f +1.248.357.5036

Vera.young@cfins.com | www.cfins.com

January 10, 2019

Elite Restoration, Inc.
24 Hagerty Blvd., Ste. 2
West Chester, Pennsylvania 19382
Attention: Charles Culbertson
Sent via email only: cculbertson@eliterestorationinc.com

Re: Insured: Elite Restoration, Inc.
Claimant: The Enclave
Claim No.: 22167FM-1
Date of Loss: 10/12/2018
Insurer: First Mercury Insurance Company
Policy No.: NJ-CGL-0000043188-05
Policy Period: 3/1/2018-3/1/2019

DENIAL OF COVERAGE

Dear Mr. Culbertson:

United States Fire Insurance Company is the authorized claims administrator for the First Mercury Insurance Company ("First Mercury") policy referenced above. I have been assigned to handle this matter on behalf of First Mercury. On October 29, 2018, we received notice from your agent WT Shevland & Associates of a potential claim. Specifically, Elite Restoration Inc. ("Elite") was in the process of removing the waterproofing barrier on the exterior of The Enclave Condominium in Atlantic City when weather related to hurricane Michael struck the east coast of New Jersey. It's alleged that as a result of Elite's ongoing work at the time the Condominium building was left without full water barriers during this storm resulting in water getting into some of the units of the building. While we are not opining on the allegations as to facts we are simply stating what was reported to us. This letter supplements the letter sent to your office on December 12, 2018.

Based upon the information as reported to us at this time we wish to inform you of policy restrictions and / or limitations that affect this matter. This letter is based upon a review of the Commercial General Liability policy issued by First Mercury to Elite Restoration, Inc, bearing policy number: NJ-CGL-0000043188-05 with effective dates of 03/01/2018 to 03/01/2019. This policy carries limits of

\$1,000,000 per occurrence subject to a \$5,000 per claim deductible. For the reasons set forth below, First Mercury is denying coverage for this loss.

THE POLICY

The insuring agreement is contained in form CG0001 (12/07) and reads in part:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and

Your policy contains endorsement number FMIC GL 2618 (11/15) which reads:

RESIDENTIAL PROPERTY OR CONSTRUCTION EXCLUSION (OTHER THAN APARTMENTS) – WITH DESIGNATED EXCEPTION(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following additional exclusion applies under paragraph 2. Exclusions of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to any claim, "suit," demand or loss that alleges "bodily injury," "property damage" or "personal and advertising injury" that in any way, in whole or in part, arises out of, relates to or results from:

1. The construction of "residential property";
2. The maintenance or failure to maintain "residential property";
3. The repair or failure to repair "residential property";
4. The renovation of "residential property"; or
5. The ownership, occupation, rental, lease, management or use of "residential property";

if the "residential property" was built, constructed, maintained, repaired, renovated, owned, occupied, rented, leased, managed or used by or on behalf of any insured at any time.

B. The following additional definition applies under SECTION V – DEFINITIONS:

"Residential property" means any of the following types of buildings, units or structures: single or multi-family dwellings, condominiums, townhomes including zero lot line townhomes, cooperative apartments, time-shared properties, and the entirety of any commercial or mixed use building, unit or structure of which any of the foregoing forms a part. "Residential property" also includes any common areas and infrastructure associated with any of the foregoing. Any building, unit or structure that becomes or is converted to "residential property" shall be deemed to be "residential property" as of the date of its original construction. "Residential property" does not include apartments that are not any of the foregoing and that are intended to be leased or rented out to others.

However, this exclusion does not apply to the following designated exception(s):

Single-family dwellings that are not "tract homes", condominiums (as defined by applicable controlling statute) or "townhouse projects". "Tract homes" means 50 or more single-family dwellings constructed by a developer consecutively or concurrently on a single or subdivided parcel or tract of land utilizing common or similar design elements, floorplans or blueprints. "Townhouse projects" means multi-unit housing consisting of homes in a row of the same or similar design with common walls or with very narrow spacing between adjacent sidewalls.

COVERAGE POSITION

The work being performed by Elite in this matter was to a high rise condominium building. The above cited Residential Property or Construction Exclusion bars coverage for work on "Residential Property" which includes in its definition condominiums. The exception contained in the exclusion only applies to certain single family dwellings that are neither "tract homes," condominiums or "townhouse projects." As none of the exceptions apply, and given this incident occurred with a condominium building, the above referenced exclusion bars coverage for this matter.

The above review may not be an exhaustive analysis of all coverage questions that have been, or may be, presented in this case. Thus, First Mercury reserves its rights to decline coverage in this matter not only due to all known reasons, but also for any unknown or unstated reasons that may exist based on the terms of the First Mercury policy. Should continued investigation into this matter reveal additional facts that demonstrate incidents that do not fall within the coverage provided by the First Mercury policy, First Mercury reserves its rights to further disclaim coverage under the First Mercury policy and shall not be estopped from citing other policy exclusions or conditions. Any prior action or discussion which occurred in connection with this claim on behalf of First Mercury should not be construed by you as a waiver or relinquishment of any of the rights or defenses which First Mercury may have, or hereinafter may have, under the First Mercury policy, as it is the specific intention of First Mercury to preserve all, and reserve all, of the rights and defenses that it may have under the First Mercury policy.

If you have any knowledge or any additional or different facts that you believe would alter any of the positions taken by First Mercury as stated above, please contact me at your earliest possible convenience so that First Mercury may consider them. Additionally, please do not hesitate to contact me immediately if you have any questions regarding this letter.

No action undertaken by us in investigating the facts in connection with this claim shall be construed in any way as waiving any right or operating as an estoppel to assert any right which we have under the law or policy at issue, nor shall any such action be deemed in any way to be an admission of liability or an admission of coverage under the Policy.

Should you have any questions or concerns regarding the coverage position set forth by us in this letter, please do not hesitate to contact me.

Sincerely,



Vera Young
Executive Specialist

EXHIBIT C



ATTORNEYS AT LAW

DIRECT DIAL NO.: 412,263,4374
E-MAIL: pre@Pietragallo.com

March 15, 2019

Via email – vera.young@cfins.com – and U.S. Mail

Vera Young
Crum & Forster
26600 Telegraph Road
Southfield, MI 48033

Re:	Insured:	Elite Restoration, Inc.
	Claimant:	The Enclave
	Claim No.:	22167FM-1
	Date of Loss:	10/12/2018
	Insurer:	First Mercury Insurance Company
	Policy No.:	NJ-CGL-0000043188-05
	Policy Period:	3/1/2018 – 3/1/2019

Dear Ms. Young:

Please be advised that we are counsel to Elite Restoration, Inc. (“Elite”) with respect to its claim for insurance coverage referenced in your January 10, 2019 letter denying coverage for Elite’s potential liability arising out of its work at a building owned by The Enclave Condominium Association, Inc. (“The Enclave”), in Atlantic City, New Jersey. This letter responds to your January 10, 2019 letter. As explained below, Crum & Forster’s denial is based on a misunderstanding of fact, and we ask Crum & Forster to accept coverage as quickly as possible.

In your January 10, 2019 letter you deny coverage to Elite for the damages suffered to The Enclave and the private units inside the building because of an Endorsement to the policy that excludes coverage for any construction, maintenance, repair, renovation, etc. of any residential property which includes condominiums. As you quote in your January 10, 2019 letter, however, this exclusion does not apply to condominiums if they are defined as such by applicable controlling law. As is self-evident from the Certificate of Insurance issued to The Enclave Condominium Association, Inc., and by its very name, The Enclave is in fact a condominium as defined by New Jersey law. Consequently, the policy provides for coverage for

OHIO

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WEST VIRGINIA

Vera Young, Esquire
March 14, 2019
Page 2

potential liability at condominiums as long as, as is the case here, they qualify as such under the local applicable statute.

Please advise by Friday, March 29, 2019, that Crum & Forster has rescinded its denial of coverage and has accepted coverage for Elite's claim. As you know from having received the November 20, 2018 "First & Final Report" from Custard Insurance Adjusters, numerous units suffered damage as estimated by Custard, and as agreed by Custard, ServePro charged a reasonable sum for its service to respond to the immediate remediation needs. Crucially, many of the units are occupied only during the spring, summer, and fall seasons due to their location at the shore. Many of the units are likely to be rentals, and to the extent that the owners of the units cannot use them for their own personal use or cannot use them for rental income, the amount of damages that the Condominium Association and its owners will be able to claim will increase significantly if the Condominium Association and its units are not immediately repaired.

If Crum & Forster has not accepted coverage by Friday, March 29, 2019, Elite will seek to mitigate damages by contacting the individual unit owners to seek permission to enter and repair, and Elite will seek to recover all such costs from Crum & Forster. Of course, if Crum & Forster accepts coverage, Elite will not be forced to expend its own resources to mitigate damages.

Thank you for your consideration of this matter. We look forward to hearing from you regarding Crum & Forster's position. Of course, should you have any questions or comments or require any additional information please do not hesitate to contact me.

Very truly ours,

Phillip R. Earnest

Phillip R. Earnest

PRE/kmb

cc: William T. Shevland (via email – wshevland@shevland.com – and U.S. mail)
Susanne Brennan (via email – sbrennan@shevland.com – and U.S. mail)

EXHIBIT D



Vera Young
Executive Specialist, Claims

d +1.248.213.5158 t +1.800.732.6837 ext 75158

f +1.248.357.5036

Vera.young@cfins.com

Crum & Forster
26600 Telegraph Road Southfield, MI 48033

April 1, 2019

**REGULAR & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7018 1830 0002 2805 1158**

Phillip R. Earnest, Esq.
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
One Oxford Centre, 38th Floor
Pittsburgh, PA. 15219

Re:	Our Insured:	Elite Restoration, Inc.
	Claimant:	The Enclave
	Claim No.:	22167Fm-1
	Date of Loss:	10/12/2018
	Insurer:	First Mercury Insurance Company

Dr. Mr. Earnest:

This letter is in response to yours dated March 15, 2019 in which you request that First Mercury Insurance Company retract its January 10, 2019 denial of coverage to Elite Restoration, Inc. ("Elite"). In your letter you argue that because the condominiums in question are defined as such by applicable controlling law in New Jersey coverage should be afforded. However, your reading of the provision is incorrect. Rather, the exception to the Residential Property or Construction Exclusion only applies to single-family dwellings that are not condominiums as defined by applicable controlling law, or single family dwellings that are not "townhouse" projects, or single family homes that are not "tract homes." As such, under the endorsement coverage is only afforded to single-family dwellings provided the dwellings are not "tract homes", condominiums or "townhouse projects." There is no dispute that the damages here were to condominiums. Accordingly, First Mercury Insurance Company will not be retracting its January 10, 2019 denial of coverage in this matter. Should you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Vera Young'.

Vera Young
Executive Specialist

APR 08 2019